



INTERGOVERNMENTAL AGREEMENT (IGA)

Contract No. HG852277

ARIZONA DEPARTMENT OF
HEALTH SERVICES
1740 West Adams, Room 303
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 FAX

Project Title: HIV Prevention Program

Begin Date 1/1/08

Geographic Service Area: Gila County

Termination Date 12/31/08

Arizona Department of Health Services has authority to contract for services specified herein in accordance with A.R.S. §§ 11-951, 11-952, 36-104 and 36-132. The Contractor represents that it has authority to contract for the performance of the services provided herein pursuant to:

<input checked="" type="checkbox"/> Counties:	A.R.S. §§ 11-201, 11-951, 11-952 and 36-182.
<input type="checkbox"/> Indian Tribes:	A.R.S. §§ 11-951, 11-952 and the rules and sovereign authority of the contracting Indian Nation.
<input type="checkbox"/> School Districts:	A.R.S. §§ 11-951, 11-952, and 15-342.
<input type="checkbox"/> City of Phoenix:	Chapter II, §§ 1 & 2, Charter, City of Phoenix.
<input type="checkbox"/> City of Tempe:	Chapter 1, Article 1, §§ 1.01 & 1.03, Charter, City of Tempe.
<input type="checkbox"/> Other:	

The Contractor agrees to perform all the services set forth in the Agreement and Work Statement. Amendments signed by each of the parties and attached hereto are hereby adopted by reference as a part of this Contract, from the effective date of the Amendment, as if fully set out herein.

FOR CLARIFICATION, CONTACT:

Arizona Transaction (Sales) Privilege: _____

Name: Jose M. Sanchez

Federal Employer Identification No.: _____

Phone: 928-425-3231

Tax License No.: _____

FAX No.: 928-402-0190

Contractor Name: Gila County Health Department

Address: 5515 South Apache Avenue, Suite 100

Globe Arizona 85501

City, State Zip Code

Pursuant to A.R.S. § 11-952, the undersigned Contractor's Attorney has determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona.

Signature of Person Authorized to sign Date
Jose M. Sanchez 01-15-08
Jose M. Sanchez, Chairman, Board of Supervisors
This contract shall henceforth be referred to as Contract

No. HG852277 The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until Contractor receives a fully executed copy of the contract.

State of Arizona

Signed this 31st day of January, 2008

Signature

Date

Bryan Chambers, Chief Deputy County Attorney

Print Name and Title

Jose M. Sanchez
Chief Procurement Officer

Attorney General Contract, No. PIGA2007002730 which is an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those parties to the Agreement represented by the Attorney General.

The Attorney General, BY:

Signature

Date

Elizabeth Dietz
Print Name, Assistant Attorney General

RESERVED FOR USE BY THE SECRETARY OF STATE

29647

of State

2-1-08

Secretary of State

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1. **Definition of Terms.** As used in this Contract, the terms listed below are defined as follows:
 - "Attachment" means any document attached to the Contract.
 - "ADHS" means Arizona Department of Health Services
 - "Change Order" means a written order that is signed by a Procurement Officer and that directs the Contractor to make changes authorized by the Uniform Terms and Conditions of the Contract.
 - "Contract" means the combination of the Uniform and Special Terms and Conditions, the Specifications and Statement or Scope of Work, any Contract Amendments and any terms applied by law.
 - "Contract Amendment" means a written document signed by the Procurement Officer and the Contractor that is issued for the purpose of making changes in the Contract.
 - "Contractor" means any person who has a Contract with the Arizona Department of Health Services.
 - "Cost Reimbursement" means a contract under which a contractor is reimbursed for costs, which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of the State procurement code.
 - "Days" means calendar days unless otherwise specified.
 - "Exhibit" means any item labeled as an Exhibit.
 - "Fixed Price" establishes a set price per unit of service. The set price shall be based on costs, which are reasonable, allowable and allocable.
 - "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - "Procurement Officer" means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
 - "Purchase Order" means a written document that is signed by a Procurement Officer, that requests a vendor to deliver described goods or services at a specific price and that, on delivery and acceptance of the goods or services by the State, becomes an obligation of the State.
 - "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - "State" means the State of Arizona and/or the ADHS. For purposes of this Contract, the term "State" shall not include the Contractor.
2. **Contract Interpretation.**
 - 2.1 Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.
 - 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this contract are a part of this Contract as if fully stated in it.
 - 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments
 - 2.3.6 Exhibits
 - 2.3.7 Referenced Documents
 - 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
 - 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
 - 2.6 No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
 - 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

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- 2.8 Headings. Headings are for organizational purposes only and shall not be interpreted as having legal significance or meaning.
3. **Contract Administration and Operation.**
- 3.1 Term. As indicated on the signature page of the Contract, the Contract shall be effective as of the Begin Date and shall remain effective until the Termination Date.
- 3.2 Contract Renewal. This Contract shall not bind, nor purport to bind, the State for any contractual commitment in excess of the original Contract period. The term of the Contract shall not exceed five years. However, if the original contract period is for less than five years, the State shall have the right, at its sole option, to renew the Contract, so long as the original Contract period together with the renewal periods does not exceed five years. If the State exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the exception of price. The Contractor shall agree that the prices stated in the original Contract shall not be increased in excess of the maximum percentage of increase stated on the Pricing Schedule.
- 3.3 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4, as applicable, and all other applicable Federal and State non-discrimination laws, rules and regulations, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, Federal Executive Order 11246, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, Title VI of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990 (Public Law 101-336), and all other acts required for compliance with the federal funding source.
- 3.4 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.5 Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.6 Financial Management. For all contracts, the practices, procedures, and standards specified in and required by the Accounting and Auditing Procedures Manual for the ADHS funded programs shall be used by the Contractor in the management of contract funds and by the State when performing a contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these contract services shall be accounted for in a separate fund.
- 3.6.1 Federal Funding. Contractors receiving federal funds under this contract shall comply with the certified finance and compliance audit provision of the Office of Management and Budget (OMB) Circular A-133, if applicable. The federal financial assistance information shall be stated in a Change Order or Purchase Order.
- 3.6.2 State Funding. Contractors receiving state funds under this contract shall comply with the certified compliance provisions of A.R.S. § 35-181.03.
- 3.7 Inspection and Testing. The Contractor agrees to permit access, at reasonable times, to its facilities, subcontractor facilities and the Contractor's processes for producing the materials for inspection of the materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.8 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the signature page by the Contractor, unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to an ADHS Procurement Officer, unless otherwise stated in the Contract. An authorized ADHS Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice, and an amendment to the Contract shall not be necessary.
- 3.9 Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of an ADHS Procurement Officer.

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3.10 Property of the State.

3.10.1 Equipment. The title to any and all equipment acquired through the expenditure of funds received from the State shall remain the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. When this Contract is terminated, the disposition of all such property shall be determined by the ADHS. For Fixed Price contracts, when the Contractor provides the services/materials required by the contract, any and all equipment purchased by the Contractor remains the property of the Contractor. All purchases of equipment need to be reported to the ADHS Office of Inventory Control.

3.10.2 Title and Rights to Materials. As used in this section, the term "Materials" means all products created or produced by the Contractor under this Contract, including, but not limited to: written and electronic information, recordings, reports, research, research findings, conclusions, abstracts, results, software, data and any other intellectual property or deliverables created, prepared, or received by the Contractor in performance of this Contract. Contractor acknowledges that all Materials are the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. The Contractor is not entitled to a patent or copyright on these Materials and may not transfer a patent or copyright on them to any other person or entity. To the extent any copyright in any Materials may originally vest in the Contractor, the Contractor hereby irrevocably transfers to the ADHS, for and on behalf of the State, all copyright ownership. The ADHS shall have full, complete and exclusive rights to reproduce, duplicate, adapt, distribute, display, disclose, publish, release and otherwise use all Materials. The Contractor shall not use or release these Materials without the prior written consent of the ADHS. When this Contract is terminated, the disposition of all such Materials shall be determined by the ADHS. Further, the Contractor agrees to give recognition to the ADHS for its support of any program when releasing or publishing program Materials.

4. Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate Contractor's Expenditure Report for payment from the State within thirty (30) days, as provided in the Accounting and Auditing Procedures Manual for the ADHS.

4.2 Recoupment of Contract Payments.

4.2.1 Unearned Advanced Funds. Any unearned State funds that have been advanced to the Contractor and remain in its possession at the end of each budget term, or at the time of termination of the Contract, shall be refunded to the ADHS within forty-five (45) days of the end of a budget term or of the time of termination.

4.2.2 Contracted Services. If the number of services provided is less than the number of services for which the Contractor received compensation, funds to be returned to the ADHS shall be determined by multiplying the unit of service cost by the number of services the Contractor did not provide during the Contract term.

4.2.3 Refunds. Within forty-five (45) days after the end of each budget term or of the time of termination of the Contract, the Contractor shall refund the greater of: i) the amount refundable in accordance with paragraph 4.2.1, Unearned Advanced Funds; or ii) the amount refundable in accordance with paragraph 4.2.2, Contracted Services.

4.2.4 Unacceptable Expenditures. The Contractor agrees to reimburse the ADHS for all Contract funds expended, which are determined by the ADHS not to have been disbursed by the Contractor in accordance with the terms of this Contract. The Contractor shall reimburse ADHS within 45 days of the determination of unacceptability.

4.3 Delivery. Unless stated otherwise in this Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destinations.

4.4 Unit Costs/Rates or Fees. Unit costs/rates or fees shall be based on costs, which are reasonable, allowable and allocable as outlined in the Accounting and Auditing Procedures Manual for the ADHS.

4.5 Applicable Taxes.

4.5.1 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.5.2 Tax Indemnification. The Contractor and all subcontractors shall pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the State

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harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- 4.5.3 I.R.S. W9 Form. In order to receive payment under any resulting Contract, the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona.

- 4.6 Availability of Funds for the Next Fiscal Year. Funds may not be presently available for performance under this Contract beyond the current fiscal year. The State may reduce payments or terminate this contract without further recourse, obligation or penalty in the event that insufficient funds are appropriated. The State shall not be liable for any purchases or Subcontracts entered into by the Contractor in anticipation of such funding. The Procurement Officer shall have the discretion in determining the availability of funds.

5. Contract Changes.

- 5.1 Amendments, Purchase Orders and Change Orders. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment, Purchase Order and/or Change Order within the scope of the Contract, unless the change is administrative or otherwise permitted by the Special Terms and Conditions. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized State employee or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized Contract Amendments, Purchase Orders and/or Change Orders, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference all material and applicable terms and conditions of this Contract.

- 5.3 Assignments and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the Purchase Order, Change Order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

- 6.2 Mutual Indemnification. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims, which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

- 6.3 Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of performance of the Contract or use by the State of materials furnished by or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

6.4 Force Majeure.

- 6.4.1 Liability and Definition. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; acts of terrorism; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-interventions not caused by or resulting from the act or failure to act of the parties; failures or refusals to act by government authority not caused by or resulting from the act or failure to act of the parties; and other similar occurrences beyond the control of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence.

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6.4.2 *Exclusions.* Force Majeure shall not include the following occurrences:

- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 *Notice.* If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 *Default.* Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor toward the fulfillment of this Contract.

7. Warranties.

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

- 7.2.1 Of a quality to pass without objection in the Contract description;
- 7.2.2 Fit for the intended purposes for which the materials are used;
- 7.2.3 Within the variations permitted by the contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations After Contract Expiration and Termination.

7.6.1 *Contractor's Representations and Warranties.* All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12.510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

7.6.2 *Purchase Orders and Change Orders.* Unless otherwise directed in writing by the Procurement Officer, the Contractor shall fully perform and shall be obligated to comply with all Purchase Orders and Change Orders received

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by the Contractor prior to the expiration or termination hereof, including, without limitation, all Purchase Orders and Change Orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies.

8.1 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to, perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract.

8.2 Stop Work Order.

8.2.1 Terms. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period up to ninety (90) Days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 Cancellation or Expiration. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

8.6 Right to Purchase Materials or Complete Work. In the case of default, the State shall have the right to procure materials or services to replace those under this Contract in accordance with the Arizona procurement code. The State may recover any reasonable costs from the Contractor by:

8.6.1 Deduction from an unpaid balance;

8.6.2 Collection against the bid and/or performance bond;

8.6.3 An action to recover costs; and/or

8.6.4 Any combination of the above or any other remedies as provided by this Contract or law.

9. Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is, or becomes at any time while the Contract or an extension of the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation, unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement, securing the Contract or an amendment to the Contract, or receiving favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

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- 9.3 **Suspension or Debarment.** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 9.4 **Termination for Convenience.** The State reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 **Termination for Default.** The State reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any material obligation, term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract.
- 9.6 **Continuation of Performance Through Termination.** Upon receipt of the notice of termination and until the effective date of the notice of termination, the Contractor shall perform work consistent with the requirements of the Contract and, if applicable, in accordance with a written transition plan approved by the ADHS. If the Contract is terminated in part, the Contractor shall continue to perform the Contract to the extent not terminated. After receiving the notice of termination, the Contractor shall immediately notify all subcontractors, in writing, to stop work on the effective date of termination, and on the effective date of termination, the Contractor and subcontractors shall stop all work.
- 9.7.1 **Disposition of Property.** Upon termination of this Contract, all property of the State, as defined herein, shall be delivered to the ADHS upon demand.
10. **Arbitration.** Pursuant to A.R.S. § 12-1518, disputes under this Contract shall be resolved through the use of arbitration as follows:
- 10.1 **Cases under the Jurisdictional Limit.** In all cases filed in superior court in which the court finds or the parties agree that the amount in controversy does not exceed the jurisdictional limit, arbitration shall be used, unless all parties file a written stipulation waiving the arbitration requirement, and the court waives the arbitration requirement on a showing of good cause;
- 10.2 **Public Works Contracts.** In all claims involving public works contracts, if the amount in controversy is less than one hundred thousand dollars, arbitration shall be used.
11. **Communication.**
- 11.1 **Program Report:** The Contractor shall provide program reports in a format approved by ADHS on all activities in the performance of the Contract.
- 11.2 **Information and Coordination.** The State will provide information to the Contractor pertaining to activities that affect the Contractor's delivery of services, and the Contractor shall be responsible for coordinating its activities with the State's in such a manner as not to conflict or unnecessarily duplicate the State's activities. As the work of the Contractor progresses, advice and information on matters covered by the Contract shall be made available by the Contractor to the State throughout the effective period of the Contract.
12. **Client Grievances.** The Contractor and its subcontractors shall use a procedure through which clients may present grievances about the operation of the program that results in the denial, suspension or reduction of services provided pursuant to this Contract and which is acceptable to and approved by the State. The State, at its discretion, may participate in or review all such grievances within 30 days after the Contractor has submitted its findings for the initial grievance.
13. **Insurance.**
- 13.1 **Type of Insurance.** Contractor represents that it is insured and/or self-insured pursuant to:

- ☒ Counties, Cities Towns: A.R.S. §§ 11-952.01 and/or 11-981.
- ☐ School Districts: A.R.S. §§ 15-382 and/or 15-387.
- ☐ Indian Tribes/Federal Government: Contractor represents that it is insured and/or self-insured.
- ☐ Other:

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13.2.1 Sovereign Immunity. Pursuant to A.R.S. § 41-621(O), the obtaining of insurance by the State shall not be a waiver of any sovereign immunity defense in the event of suit.

14. **Fingerprint and Certification Requirements/Juvenile Services.**

14.1 Paid and Unpaid Personnel. The Contractor shall ensure that all paid and unpaid personnel who are required or are allowed to provide Services directly to juveniles have obtained class 1 or class 2 fingerprint clearance cards in accordance with A.R.S. §§ 41-1758 et. seq. The Contractor may, when applicable, submit verification of fingerprinting and certification of an employee by the Department of Economic Security, the Department of Corrections or the Arizona Supreme Court to meet this requirement.

14.2 Supervision. The Contractor shall ensure and verify that those employees who qualify only for a restricted certification shall be supervised when providing services directly to juveniles.

14.3 Costs. The Contractor shall assume the costs of fingerprint certifications and may charge these costs to its fingerprinted personnel.

15. Administrative Changes. The Procurement Officer, or authorized designee, reserves the right to correct any obvious clerical, typographical or grammatical errors, as well as errors in party contact information (collectively, "Administrative Changes"), prior to or after the final execution of a Contract or Contract Amendment. However, such corrections shall be allowed only to the extent that they do not change the intent of the parties or the material terms of the Contract or Contract Amendment. Administrative Changes subject to permissible corrections include: misspellings, grammar errors, incorrect addresses, incorrect Contract Amendment numbers, pagination and citation errors, mistakes in the labeling of the rate as either extended or unit, and calendar date errors that are illogical due to typographical error. The Procurement Office shall subsequently send to the Contractor notice of corrections to Administrative Changes in a written confirmation letter with a copy of the corrected Administrative Change attached.

16. Funding Cap Changes. The State shall use a Purchase Order and/or Change Order to make changes that increase and/or decrease federal Funding Caps. For purposes of this paragraph, a "Funding Cap" is defined as the total amount of money allowed by the federal funds.

17. Cost Reimbursement Contract Changes. The Contractor and the State agree that, in a Cost Reimbursement contract that is not the result of a bid under A.R.S. §§ 41-2501 et seq., an increase in the Total Contract Amount, or Increase in the Incremental Cost Amounts and/or relative changes to Levels of Service will not require a Contract Amendment. The State shall use a Purchase Order and/or Change Order to make these changes, and both parties acknowledge that such changes shall be the result of negotiations between the parties. For purposes of this paragraph, "Increase in the Total Contract Amount" means an increase in the total allowable costs indicated on the price sheet, and "Increase in the Incremental Cost Amounts" mean an increase in the individual allowable cost totals for listed expenses as indicated on the price sheet. Levels of Service mean the required units of a particular service. In addition to issuing the Purchase Order or Change Order, the State shall notify the Contractor of the changes in writing with an attached price sheet indicating the changes. The provisions of the Purchase Order or Change Order will be deemed to have been accepted 30 days after the date the State provides notice of the changes to the Contractor, unless within that time, the Contractor notifies the State in writing that it disputes or refuses the terms of the Purchase Order or Change Order.

18. Comments Welcome. The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: Procurement Administrator, Department of Health Services, 1740 West Adams, Room 303, Phoenix, Arizona 85007.

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1. TERM OF CONTRACT

The term of the resultant contract shall commence on January 1, 2008 and shall remain in effect for one (1) year unless terminated, canceled, or extended as otherwise provided herein.

2. CONTRACT EXTENSION (4 YEARS)

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to one year for a maximum of four (4) years. The contract term shall not exceed a total of five (5) years from the effective date of the contract.

3. CONTRACT TYPE

☒ Cost Reimbursement

4. AUTHORIZATION FOR PROVISION OF SERVICES

Authorization for purchase of services under this contract shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist on behalf of ADHS unless: a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this contract.

5. HIPAA COMPLIANCE:

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996

MIHS warrants that it is familiar with the requirements of HIPAA and HIPAA's accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. MIHS warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both the ADHS and MIHS will be in compliance with HIPAA, including cooperation and coordination with the ADHS Privacy Officer and other compliance officials required by HIPAA and its regulations. MIHS will sign any documents that are reasonably necessary to keep the ADHS and MIHS in compliance with HIPAA, including, but not limited to, business associate Agreements.

If requested by the ADHS, MIHS agrees to sign the "Arizona Department of Health Services Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, Use and Disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by the ADHS or to provide written verification that MIHS has attended or participated in job related HIPAA training that is: (1) Intended to make MIHS proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADHS HIPAA Compliance Officer.

6. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. All services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

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7. FEDERAL IMMIGRATION LAWS, COMPLIANCE BY STATE CONTRACTORS:

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

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I. BACKGROUND

The Office of HIV/AIDS Services of the Arizona Department of Health Services (ADHS) has the responsibility for administering HIV Prevention Program Cooperative Agreement funds provided by the U.S. Centers for Disease Control and Prevention (CDC). These funds are provided to state health departments to implement a comprehensive statewide HIV Prevention Program. Arizona's program is based upon priorities established during the HIV Prevention Community Planning process and in conjunction with CDC Cooperative Agreement guidelines. During 2007-2011, the overall recommendation for statewide prevention programming is to target HIV positive persons and their partners, men who have sex with men, and injection drug users. Men who have sex with men have a particular need for prevention services because this behavioral risk group represents the majority of emerging and existent HIV infections in Arizona.

II. OBJECTIVE

To provide HIV Health Communication and Public Information (HCPI) services as needed.

III. SCOPE OF WORK

- A. To provide access to quality HIV Services throughout Arizona.
- B. Conduct HIV Counseling, Testing, and Referral Services (CTS), focusing when feasible and appropriate on those populations at highest behavioral risk for HIV in Arizona according to the latest version of the statewide Comprehensive HIV Prevention Plan.

IV. TASKS

The Contractor shall:

1. Provide HCPI that includes: public presentations educational activities, health fairs and other venues for raising awareness about HIV prevention sexually transmitted diseases (STD) and viral hepatitis in the community. Minimal data entry will be required to meet this objective.
2. Identify a supervisor for its HIV program in order to facilitate accountability, communication, quality assurance, and the discussion of programmatic issues as appropriate. Training will be provided by ADHS to all supervisors on an as-needed basis and during mandatory scheduled Contractor meetings.
3. Provide ADHS with a list of personnel conducting testing and/or public information activities, and their full-time equivalents (FTE) funded under this Agreement.
4. Adhere to the Key Personnel requirements provided in the Special Terms and Conditions section of this Agreement.
5. Ensure training of persons providing CTS to clients.
 - a. All staff providing HIV services must successfully complete ADHS-approved training activities. The deadline for these tasks will be jointly determined by the Contractor and ADHS. With guidance to be provided by ADHS, each Contractor must establish written protocols outlining internal county training activities and provide the protocol to ADHS within 30 days of contract execution.
6. Establish and implement a quality assurance (QA) program to assess the quality of the HIV Prevention Services. Provide ADHS with a narrative report yearly that describes the progress and results of the quality assurance activities. Include information on how the clients benefited from the quality assurance program implemented (via client satisfaction surveys, etc).
7. Assure and document that ninety percent (90%) of the negative and ninety-five (95%) of the positive persons tested in this program receive their test results.

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8. Work with newly HIV-positive clients
 - a. Seropositive clients must receive medical and psychosocial referrals which will be recorded in the ADHS web-based reporting system.
 - b. CTS staff shall elicit clients' needles or work sharing and sexual contacts for referral into the Partner Services System (PSS).
 - c. CTS staff shall provide Partner Services (PS) to all positive clients identified in county clinics.
9. Collaborate with ADHS and/or Regional providers to facilitate successful PS and surveillance services for newly-diagnosed HIV-positive clients and, in the case of PS, for those persons at continuing high risk for HIV infection.
10. Ensure that CTS is:
 - a. Confidential in all aspects. It is critical that all CTS programs include strict procedures for ensuring privacy, confidentiality, and security of data, as well as screening for and addressing potential partner violence.
 - b. Culturally sensitive and acceptable to the populations being served by the program.
 - c. Appropriately documented. Data will be collected on all tests conducted in accordance with ADHS requirements and CDC standards and guidance. This data will be entered into the ADHS web-based reporting system. CDC HIV revised recommendations for HIV testing in health care settings uses a reduced data form available from ADHS.
11. Work with the Arizona State Lab (ASL) according to the most recent version of the ASL, Clinical Laboratory Improvement Amendment (CLIA) certificate monitor, test manufacturer's package inserts and ADHS lab testing procedures and protocols as applicable.
 - a. Only confirmatory testing of preliminary positive specimens from an FDA approved HIV screening test shall be submitted to the ASL. No preliminary screening testing shall be done by the ASL.
 - b. Dedicated HIV clinics are not required; however HIV testing should be made available upon request as outlined in Arizona State Statutes. For example HIV testing may be made available in HIV, sexually transmitted disease (STD), family planning (FP), tuberculosis (TB) and prenatal clinics as appropriate for the jurisdiction.
 - c. Appropriate laboratory slips must be completed, and preliminary positive confirmatory specimens must be delivered to the Arizona State Laboratory (ASL). All rapid test confirmations shall be tested using blood or serum.
 - d. Submitter must submit, at a minimum, a 10ml tube of blood to ASL.
 - e. The ASL shall test all preliminary positives specimens (those with a positive screening test) for Hepatitis C and syphilis at the same time as the confirmatory HIV test is performed. These tests should be noted on the ASL submitter form.
 - f. Testing conducted in accordance with the "2006 CDC HIV testing in Health Care Settings" documents will have reduced data entry requirements.
12. Monitor Implementation of the CTS program.
 - a. In accordance with CDC requirements, the Contractor must collaborate with ADHS Office of HIV/AIDS in reaching the following CDC HIV Prevention Program Performance Indicators to monitor the HIV counseling and testing services.

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- i. Number of newly diagnosed HIV infections
 - ii. Number of newly diagnosed HIV infections, 13-24 years of age
 - iii. Percent of newly identified, confirmed HIV-positive test results among all tests reported by HIV counseling, testing and referral sites
 - iv. Percent of newly identified, confirmed HIV test results returned to the clients
 - v. Percent of facilities reporting a prevalence of HIV positive tests equal to or greater than the Arizona target prevalence as defined in the most recent HIV Prevention Cooperative Agreement documents prepared by ADHS and submitted to CDC.
- b. Other program monitoring measures:
- i. The Contractor must be able to fully participate in web-based reporting of data elements mandated by CDC and ADHS. This includes but is not limited to: access to a computer, Internet capability, and e-mail.
 - ii. All tests conducted in the HIV program must have data entered into the ADHS web-based system within three days of test completion.
 - iii. For each calendar year, all programs and web system users as designated by CDC must sign a Memorandum of Understanding and Rules of Behavior documents with ADHS in accordance with CDC data-management requirements.
 - iv. Establish and implement a quality assurance (QA) program to assess the quality of the HIV Prevention Counseling and Testing Services. Provide ADHS with a narrative report yearly that describes the progress and results of the Quality Assurance activities. Include client satisfaction survey information about how the clients benefited from CTS services.
 - v. All websites maintained by contractors shall contain a notice alerting individuals who may be searching or browsing the web that the content may not be appropriate for all audiences. Sample messages may be obtained from ADHS.
 - vi. The contractor must fully cooperate with other contractors and state employees fitting the work into the Statewide ADHS Counseling and Testing Network. The contractor shall not commit or permit any act that interferes with the performance of any other ADHS contractor or state of Arizona employees.
 - vii. All Contractors shall provide a complete list of the site numbers operating under their auspices by January 30th of each calendar year. Any additions or deletions will be reported to ADHS in writing within five business days.
 - viii. All educational and promotional materials developed or utilized by the program will be approved by the ADHS Materials Review Committee and the ADHS Prevention Program Monitor prior to their use. Guidelines for submission may be obtained from ADHS.

V. REQUIREMENTS:

The Contractor shall have:

1. Access to computer, Internet, e-mail, and other communication strategies to ensure frequent contact with ADHS HIV/AIDS Office prevention staff and performance of web-based reporting activities.
2. Expertise in Counseling and Testing Services techniques determined either through ADHS Regional CTS Training Center or ADHS staff review.

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3. Ability to initiate and maintain agreements with community partners supporting CTS activities.
4. A current list of personnel providing services under this contract. Any changes to personnel shall be reported to ADHS within five (5) business days.
5. All HIV testing sessions must be in accordance with ADHS HIV CTS policies and procedures (see VI 2.) and the most recent version of the CDC HIV revised recommendations for HIV testing in Health Care settings (Sept 2006 Section VI for Reference Documents).

VI. REFERENCE DOCUMENTS: Available from ADHS Office of HIV/AIDS Prevention Program upon request:

1. CDC Counseling and Testing Services Guidance www.cdc.gov/hiv/testing.htm#guidelines "2006 Version Guidelines in Health Care Settings".
2. ADHS HIV CTS Policies and Procedures
3. CDC Program Evaluation and Monitoring System (PEMS) materials related to data variables and reporting requirements.
4. CDC Materials Review Interim Guidance
5. CDC HIV Prevention Cooperative Agreement materials

VII. APPROVALS:

1. The ADHS will make payment in accordance with the terms and conditions set forth in the Contract.
2. The Prevention Manager in the Office of HIV/AIDS Services, or a designee, will accept the monthly Contractor Expenditure Report upon completion, submission, and approval of all deliverables and reporting requirements.
3. The due date for monthly reports and invoicing is the 15th of the month, following the month of service.
4. ADHS may authorize variations to, and adjust payments for, under and over production of monthly minimum unit rates, not to exceed the annual contract amount, on a case-by-case basis.
5. As appropriate, materials developed or used in CTS and HCPI shall be submitted to and reviewed by ADHS HIV Prevention Materials Review Committee.

VIII. DELIVERABLES

The Contractor shall provide services and submit to the ADHS an invoice (CER) of the following deliverables in accordance with the Price Sheet of Cost Reimbursement Line Items.

1. Evidence of web-based submission of accurate and completed CTS, PS or HCPI data and other information as required or requested by CDC and/or ADHS.
2. A completed Contractor Expenditure Report (CER).
3. Detailed Budget Narrative (annual) and a monthly Expenditure Justification that matches CER. Acceptance is signified by signature of the ADHS Program Director on the CER showing performance is satisfactory for payment.

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4. Brief monthly narrative outlining progress toward objectives, areas of programmatic concern, and activities conducted during the month under claim.

IX. ACCEPTANCE

1. Upon receipt of all specified deliverables as stated above.

X. NOTICES, CORRESPONDENCE AND REPORTS

1. The Contractor shall submit all reports required by ADHS with a cover sheet, specifying the following:
 - a. Contractor's name;
 - b. Contract number;
 - c. Period covered by report;
 - d. Name and phone number of the individual who is prepared to answer questions regarding the programmatic contents of the report from ADHS staff.
 - e. Name and phone number of the individual who is prepared to answer questions regarding the financial contents of the report from ADHS staff.
2. The Contractor shall address all notices, correspondence, reports, and program-specific requests relative to this Contract to:

Office of HIV/AIDS
HIV Prevention Program
AZ Department of Health Services
150 N. 18th Avenue, #110
Phoenix, AZ 85007
(602) 364-3610

3. The Department shall address all notices, correspondence and payments relative to this Contract to:

Gila County Health Department
HIV/Prevention
5515 South Apache Avenue
Suite 100
Globe, Arizona 85501

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PRICE SHEET/FEE SCHEDULE

Cost Reimbursement Line Items	Budgeted Amount
Personnel	\$3,060.00
ERE	\$662.00
Travel	\$240.00
Professional and Outside Services	\$0.00
Other Operating	\$546.00
Indirect	\$0.00
TOTAL	\$4,508.00

NOTE: With prior written approval from the Program Manager, the contractor is authorized to transfer up to a maximum of ten percent (10%) of the total budget amount between line items. Transfers of funds are only allowed between funded line items. Transfers exceeding ten percent (10%) or to a non-funded item shall require an amendment.